

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PAUL JONES,)
Plaintiff,)
v.) C.A. NO. 1:19-CV-11076-FDS
DOLAN CONNLY P.C., JAMES W. DOLAN,)
BARBARA D. CONNLY, KATHLEEN M.)
ALLEN, DAVID A. MARSOCCI, CINDY SILVA,)
BANK OF NEW YORK MELLON, GREGORY A.)
CONNLY, ORLANS P.C., LINDA ORLANS,)
ALISON ORLANS, JANE DOE, AND JOHN DOE)
AND SELECT PORTFOLIO SERVICING, INC.,)
Defendants.)

)

**MOTION OF DEFENDANTS SELECT PORTFOLIO SERVICING, INC.
AND THE BANK OF NEW YORK MELLON, AS TRUSTEE, TO DISMISS
AMENDED VERIFIED COMPLAINT FOR FAILURE TO STATE A CLAIM**

Defendants The Bank of New York Mellon, as Trustee (the “Trustee”), and Select Portfolio Servicing, Inc. (“SPS”), pursuant to Fed. R. Civ. P. 12(b)(6), hereby move to dismiss Plaintiff’s Amended Verified Complaint for failure to state a claim as a matter of law. The count for violation of the Fair Debt Collection Practices Act is time-barred pursuant to the one-year statute of limitations. Plaintiff also fails to establish a legal basis to void the April 9, 2018 foreclosure sale. Likewise, the Amended Verified Complaint does not state any actionable unfair or deceptive conduct by the Trustee or SPS with respect to Plaintiff’s mortgage loan necessary to support a claim under G.L. c. 93A. Plaintiff cannot maintain a private right of action to enforce the Massachusetts debt collection regulations. Consequently, all counts of the Amended Verified Complaint must be dismissed. Defendants further rely upon their Memorandum of Law on file.

For the foregoing reasons, Defendants The Bank of New York Mellon, as Trustee, and Select

Portfolio Servicing, Inc. request this Court to dismiss Plaintiff's Verified Amended Complaint against them in its entirety with prejudice.

Respectfully submitted,

**THE BANK OF NEW YORK MELLON, AS
TRUSTEE, and SELECT PORTFOLIO SERVICING,
INC.,**

By their attorneys,

/s/ Peter F. Carr, II

Peter F. Carr, II (BBO # 600069)

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Date: July 31, 2019

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that I spoke with pro se Plaintiff Paul Jones by telephone on July 30, 2019. I advised that the purpose of my call was to confer in advance of filing a motion to dismiss the Amended Verified Complaint as required by the court rules. Mr. Jones stated that he intended to defend the motion to dismiss, and agreed that the issues could not be resolved. The parties were not able to narrow or resolve the issues raised in the motion to dismiss.

Date: July 31, 2019

/s/ Peter F. Carr, II

Peter F. Carr, II

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and electronic copies sent by email to Paul Jones at pj22765@gmail.com at Plaintiff's request, and paper copies sent by regular mail to those other parties which are non-registered participants.

Date: July 31, 2019

/s/ Peter F. Carr, II

Peter F. Carr, II